



**BILLING CODE: 8070-01-P**

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Part 1209**

**RIN 2590-AA57**

**Rules of Practice and Procedure: Enterprise and Federal Home Loan Bank Housing Goals Related Enforcement Amendment**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is amending its Rules of Practice and Procedure (RPP) to specify that the rules of practice and procedure for hearings on the record in Subpart C therein shall apply to any cease and desist or civil money penalty proceedings brought against the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), or the Federal Home Loan Banks (Banks) for failure to submit or follow a housing plan or failure of an Enterprise to submit information on its housing activities. An exception is provided where such rules are inconsistent with related statutory provisions, in which case the statutory provisions shall apply.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF**

**PUBLICATION IN THE FEDERAL REGISTER].**

**FOR FURTHER INFORMATION CONTACT:** Lyn Abrams, Assistant General Counsel, (202) 649-3059; or Sharon Like, Managing Associate General Counsel, (202) 649-3057 (these are not toll-free numbers), Office of General Counsel, Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**A. Statutory and Regulatory Background**

**1. Enterprise Enforcement for Housing Plan and Failure to Submit Housing Activities Information**

Prior to the enactment of the Housing and Economic Recovery Act of 2008 (HERA), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) provided the Secretary of the U.S. Department of Housing and Urban Development (HUD) with specific authority to establish, monitor, and enforce housing goals for mortgages purchased by Fannie Mae and Freddie Mac (collectively, the Enterprises). In addition, section 309(m) and (n) of the Federal National Mortgage Association Charter Act and section 307(e) and (f) of the Federal Home Loan Mortgage Corporation Act (collectively, Charter Acts) required that each Enterprise submit information on its housing activities to the Secretary of HUD, the Committee on Financial Services of the House of Representatives, and the Committee on Banking,

Housing and Urban Affairs of the Senate.<sup>1</sup> See 12 U.S.C. 1723a(m) and (n); 12 U.S.C. 1456(e) and (f).

The Safety and Soundness Act, prior to the HERA amendments, authorized HUD to initiate cease and desist proceedings and impose civil money penalties against an Enterprise for failure to submit or comply with a housing plan or failure to submit information on its housing activities. HUD issued regulations implementing its enforcement authority against the Enterprises for these violations. See 24 CFR part 81, Subpart G.

HERA amended the Safety and Soundness Act in 2008 to create FHFA as an independent agency of the federal government and, among other things, transferred the responsibility to establish, monitor and enforce the housing goals for the Enterprises from HUD to FHFA, and required that each Enterprise submit information on its housing activities to the Director of FHFA instead of to the Secretary of HUD. See Public Law 110-289, 122 Stat. 2654 (2008), codified at 12 U.S.C. 4501 et seq. The Safety and Soundness Act, as amended, requires the Director of FHFA to establish new annual housing goals for mortgages purchased by the Enterprises, effective for 2010 and beyond. FHFA reviews mortgage purchase data provided by each Enterprise in its Annual Housing Activities Report and other mortgage reports, as well as other available data, and determines whether the Enterprise has met the housing goals.

Enterprise compliance with the housing goals is enforced under section 1336 of the Safety and Soundness Act, which provides that if an Enterprise fails to meet a

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<sup>1</sup> The Charter Acts require that the Enterprises submit information on their housing activities to the Committee on Banking, Finance and Urban Affairs of the House of Representatives. The Enterprises submit this information to that Committee's successor, the Committee on Financial Services of the House of Representatives.

housing goal determined by the Director to be feasible, the Director may, in his or her discretion, require the Enterprise to submit a housing plan describing the specific actions the Enterprise will take to achieve the goal. See 12 U.S.C. 4566.

Section 1336 further provides that if an Enterprise fails to submit an acceptable housing plan or fails to comply with the plan, the Director may initiate cease and desist proceedings or impose civil money penalties against the Enterprise in accordance with sections 1341 and 1345, respectively, of the Safety and Soundness Act, exercise other appropriate enforcement authority, or seek other appropriate actions. See 12 U.S.C. 4566(c)(1) and (c)(7), 4581, 4585. In addition, sections 1341 and 1345 provide that the Director may initiate cease and desist proceedings or impose civil money penalties, respectively, if an Enterprise fails to submit information on its housing activities. Id. Sections 1341 to 1348 of the Safety and Soundness Act set forth the grounds and procedures for the enforcement actions. FHFA's RPP does not currently address enforcement proceedings for these violations. See 12 CFR part 1209.

## 2. Bank Housing Plan Enforcement

Section 10C(a) of the Federal Home Loan Bank Act (Bank Act), as amended by HERA (12 U.S.C. 1430c(a)), requires the Director of FHFA to establish housing goals with respect to the purchase of mortgages, if any, by the Banks. Section 10C(a) further states that the goals shall be consistent with the goals established for the Enterprises under sections 1331 through 1334 of the Safety and Soundness Act, taking into consideration the unique mission and ownership structure of the Banks. Section 10C(d) provides that the monitoring and enforcement requirements of section 1336 of the Safety and Soundness Act shall apply to the Banks in the same manner and to the same extent as

they apply to the Enterprises. Thus, in accordance with section 1336, if a Bank fails to submit or follow an acceptable housing plan, the Director may initiate cease and desist proceedings or impose civil money penalties against the Bank.

FHFA's Bank housing goals regulation, which implements the statutory housing goals requirements, includes housing plan provisions similar to those in FHFA's Enterprise housing goals regulation, but like the Enterprise housing goals regulation, does not specifically address enforcement actions for failure to submit or follow a housing plan. See 12 CFR part 1281.

#### B. Conservatorship

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises to maintain the Enterprises in a safe and sound financial condition and to help assure performance of their public mission. The Enterprises remain under conservatorship at this time.

## **II. Proposed Rulemaking**

To provide clarity on the rules of practice and procedure that would apply should FHFA initiate enforcement actions under sections 1341 to 1348 of the Safety and Soundness Act, FHFA published a proposed amendment to § 1209.1(c) of the RPP in the Federal Register. See 77 FR 72247 (Dec. 5, 2012). The proposed amendment provided that the rules of practice and procedure for hearings on the record in subpart C therein would apply to any cease and desist or civil money penalty proceedings brought against Fannie Mae, Freddie Mac, or the Banks for failure to submit or follow a housing plan or failure of an Enterprise to submit information on its housing activities, except where such rules are inconsistent with related statutory provisions, in which case the statutory

provisions would apply. FHFA noted that the hearing procedures in the Safety and Soundness Act for adjudicating these actions are almost indistinguishable from the statutory procedures for adjudicating other enforcement actions against the Enterprises, the Banks and their entity-affiliated parties under sections 1371 to 1379D. See 12 U.S.C. 4631-4641. Thus, the formal hearing procedures set forth in Subpart C of the RPP are well suited to govern enforcement proceedings under sections 1341 to 1348. FHFA also noted that amending § 1209.1(c) of the RPP would be a simpler and more efficient approach than making conforming amendments to each of the affected sections of the RPP.

FHFA received two comments on the proposed amendment. The commenters were an individual and the Mortgage Partnership Finance Program's Governance Committee of the Banks. Neither comment was applicable to the proposed amendment.

### **III. Final Rule**

For the reasons discussed in the proposed rulemaking and the lack of opposing comments, FHFA is adopting as final the proposed amendment to § 1209.1(c) of the RPP with no changes.

### **IV. Consideration of Differences Between the Banks and the Enterprises**

Section 1313(f) of the Safety and Soundness Act, as amended by HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks': cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; joint and several liability; and any other differences the Director considers appropriate. See 12 U.S.C.

4513(f). In preparing the proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the Banks should not be treated differently from the Enterprises. FHFA requested comment on whether the Banks should be treated differently, particularly as section 10C(d) of the Bank Act provides that the monitoring and enforcement requirements of section 1336 of the Safety and Soundness Act shall apply to the Banks in the same manner and to the same extent as they apply to the Enterprises. FHFA did not receive any comments responding to that request. Accordingly, no changes were made to the final rule as it relates to the Banks.

## **V. Paperwork Reduction Act**

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Therefore, FHFA has not submitted any materials to OMB for review.

## **VI. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act.

The General Counsel of FHFA certifies that the final rule is not likely to have a

significant economic impact on a substantial number of small entities because the regulation is applicable only to the Enterprises and the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

#### **List of Subjects in 12 CFR Part 1209**

Administrative practice and procedure, Federal home loan banks, Mortgages, Reporting and recordkeeping requirements.

#### **Authority and Issuance**

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Federal Housing Finance Agency amends part 1209, Subchapter A, Chapter XII of title 12 of the Code of Federal Regulations as follows:

#### **PART 1209—RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 1209 is revised to read as follows:

**Authority:** 5 U.S.C. 554, 556, 557, and 701 et seq.; 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581-4588, 4631-4641; and 28 U.S.C. 2461 note.

2. Amend § 1209.1 by:

- a. In paragraph (c)(2), remove the word “and”;
- b. In paragraph (c)(3), remove “.” at the end of the paragraph and add in its place “; and”; and
- c. Add new paragraph (c)(4) to read as follows:

#### **§ 1209.1 Scope.**

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(c) \* \* \*



(4) Enforcement proceedings under sections 1341 through 1348 of the Safety and Soundness Act, as amended (12 U.S.C. 4581 through 4588), and section 10C of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1430c), except where the Rules of Practice and Procedure in Subpart C are inconsistent with such statutory provisions, in which case the statutory provisions shall apply.

Dated: June 13, 2013.

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Edward J. DeMarco,  
Acting Director, Federal Housing Finance Agency.

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